

NOTE: These minutes have not been approved. They are for information only.

MINUTES OF THE MEETING OF
THE BOARD OF COSMETOLOGY EXAMINERS
April 3, 2006

ROLL CALL

The meeting of the Board of Cosmetology Examiners was called to order by the Chairperson, Pam Rowland, at 10:00 a.m., Sixth Floor Conference Room Z, Nebraska State Office Building, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Public Meeting Law. The following members answered roll call:

Virginia Davidsaver	- Member
Mike Evert	- Member
Don Osentowski	- Member
Jeff Pippitt	- Member
Pam Rowland	- Chairperson
Sherri Scheele	- Member
Amy Waskel	- Member

The following members were not present: Marie Nordboe (Vice-Chairperson, Judy Roubal, Monty Vogel, Marlene Wagoner (Secretary), and Judy Wilson.

A quorum was present and the meeting convened.

Also present were: Susan Strong, Assistant Attorney General; Kris Chiles, Section Administrator; Carol Ann Gray, Credentialing Coordinator; and Susan Chocholousek, Credentialing Specialist; Credentialing Division.

10:02 a.m. Sharon Fitts and Loretta Bennett, Investigators; Investigations Division entered the meeting.

ADOPTION OF AGENDA

Jeff Pippitt moved, seconded by Mike Evert to approve the agenda. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

APPROVAL OF MINUTES - Deferred until later in the meeting.

STATISTICAL REPORTS

Ms. Gray reported the following:

- a. **Examinations During the Year 2005** – Information received from Schroeder Measurement Technologies, the vendor for the NIC examination indicated the following:

Instructor Theory Examination: Nebraska administered a total of 24 exams; 23 pass and 1 fail.
Nebraska passing percentage: 96% National passing percentage: 70%

Nail Technology: Nebraska administered a total of 127 exams; 78 pass and 49 fail.
Nebraska passing percentage: 61% National passing percentage: 61%.

Esthetics: Nebraska administered a total of 87 exams; 63 pass and 24 fail.
Nebraska passing percentage: 72% National passing percentage: 70%.

a. Examinations – continued

Electrology: Nebraska administered 1 exam; 1 passed.

Nebraska passing percentage: 100%. National passing percentage: 70%.

Cosmetology: Nebraska administered 582 exams; 489 passed and 93 failed.

Nebraska passing percentage: 84%. National passing percentage: 67%.

A total of 821 tests were administered during 2005.

b. Renewal - no report.

c. Licensing – no report.

NATIONAL-INTERSTATE COUNCIL OF STATE BOARDS OF COSMETOLOGY (NIC)

a. Region 3 Meeting April 8 & 9, 2006, Sun Valley, Idaho

Ms. Gray indicated Marie Nordboe will be attending the Region 3 Meeting.

b. NIC Annual Conference – August 26-28, 2006, Portland, Maine

Those expressing an interest in attending were Pam Rowland, Sherry Scheele, and Jeff Pippitt. Chairperson Rowland indicated there will be some proposals to change the NIC constitution regarding the election process and it would be beneficial to have Kris Chiles, Section Administrator, attend this meeting.

MOTION: Don Osentowski moved, seconded by Jeff Pippitt to send Kris Chiles to the NIC Annual Conference. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

MOTION: Jeff Pippitt moved, seconded by Amy Waskel to send as many board members as possible to attend the NIC Annual Conference and to have the amount approved divided among those attending. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

10:06 a.m. Monty Vogel entered the meeting.

10:07 a.m. Marie Nordboe entered the meeting.

INTRODUCTION OF NEW ATTORNEY GENERAL

Kris Chiles introduced Susan Strong, the Assistant Attorney General assigned to the cosmetology board as well as some other boards. Members of the board and Credentialing staff introduced themselves.

INVESTIGATIONAL INFORMATION/REPORTS – CLOSED SESSION

MOTION: Jeff Pippitt moved, seconded by Sherri Scheele to enter Closed Session for the purpose of hearing discussion of investigative reports and for the prevention of needless injury to the reputation of the individuals. A voice vote was taken. Voting aye: all. Voting nay: none (0). Motion carried.

The board meeting entered closed session at 10:10 a.m.

Pam Rowland and Amy Waskel departed due to a potential conflict of interest at 10:20 a.m.

Duane Newland, Investigator, and Mike Grutsch, Program Manager, Investigation Division, entered the meeting at 10:23 a.m.

Susan Chocholousek departed the meeting at 10:24 a.m.

Carol Ann Gray, Lorretta Bennett and Sharon Fitts departed the meeting at 10:25 a.m.

Carol Ann Gray returned to the meeting at 10:27 a.m.

Pam Rowland, Amy Waskel, and Susan Chocholousek returned to the meeting at 10:29 a.m.

Susan Chocholousek departed the meeting at 10:31 a.m.

Susan Chocholousek returned to the meeting at 10:40 a.m.

Mike Grutsch and Duane Newland departed the meeting at 11:20 a.m.

MOTION: Marie Nordboe moved, seconded by Mike Evert to return to open session. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

The meeting reconvened to open session at 11:35 a.m. and Chairperson Rowland declared a break.

The meeting reconvened at 11:52 a.m.

DISCIPLINARY INFORMATION

Actions Pending/Taken

Kris Chiles reported the following actions taken based upon recommendations made by the board at the last meeting.

- **Nail Technology:** None
- **Body Art:** Christopher Martini, Tattoo Artist initial license issued with 5 years probation.
- **Cosmetologist:** April Prauner, initial license issued with 1 year probation.
- **Esthetician:** None
- **Administrative Penalties Assessed:** Ms. Chiles stated that since the last meeting, a number of penalties have been assessed as follows:

Nail Technician – 4

Nail Technology Salons – 3

Cosmetology Salons – 5 (operating prior to issuance of their initial license – 2
Operating after renewal – 3)

The administrative penalty fees ranged from \$10 - \$1,000. The total amount assessed is \$2,685 in penalties. Ms. Chiles advised money goes to the Department of Education Permanent School Fund for all the schools across the state.

LEGISLATIVE UPDATE

LB1041 - Ms. Chiles indicated this bill was introduced to address conviction history review by the Board of Cosmetology. The senator wanted to change the statutes to restrict the board's ability to review the conviction information. It would allow reviewing convictions only within one year of application for the license. The board's recommended actions against that license would be restricted to what the court had imposed. If the board were to go

against what the court had imposed, the department could be charged legal fees. The bill has not moved this session, nor has it been amended to any other bill.

The committee hearing was held on February 2, 2006. The board recommended that a letter be put together and sent over to the committee. The board members received a copy of that draft letter. The letter is on file with the committee.

APPLICATION REVIEW/RECOMMENDATIONS

Kris Chiles requested affirmation of the review/recommendations made during closed session:

a. **Initial Licensure:**

Katie Davis - Esthetician license

MOTION: Marie Nordboe moved, seconded by Sherri Scheele to recommend a probationary license for one year, follow the assessment recommendations and comply with all of the court conditions. A roll call vote was taken. Voting aye: Scheele, Pippitt, Osentowski, Nordboe, Evert, Davidsaver, Vogel, Waskel, and Rowland; nine (9). Voting nay: none. Motion carried.

Brian Webb – Tattoo Artist license

MOTION: Marie Nordboe moved, seconded by Mike Evert to issue a license with 2 years probation, quarterly employer reports, body fluid screenings, and follow the evaluation recommendations. A roll call vote was taken. Voting aye: Waskel, Vogel, Scheele, Pippitt, Osentowski, Nordboe, Evert, Davidsaver, and Rowland; nine (9). Voting nay: none. Motion carried.

Cheryl Schwindt – Cosmetologist license

MOTION: Marie Nordboe moved, seconded by Monty Vogel to issue Cheryl Schwindt a cosmetology license without any stipulations. A roll call vote was taken. Voting aye: Evert, Nordboe, Osentowski, Pippitt, Scheele, Vogel, Waskel, Davidsaver, and Rowland; nine (9). Voting nay: none. Motion carried.

b. **Reinstatement:** none

c. **Convictions:** none

APPROVAL OF MINUTES

The board reviewed the minutes.

MOTION: Jeff Pippitt moved, seconded by Marie Nordboe to approve the minutes from the February 6, 2006 board meeting. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

UNFINISHED BUSINESS

Inspection Form and Rating Revision

Body Art: Ms. Chiles indicated the Body Art Inspection Form was completed at the last work session. In regards to weighting the items during the inspection, this will be used during the second round of inspections. The inspection requires 100% compliance for Body Art facilities.

After the work group met, Ms. Chiles indicated she has received a letter from the Nebraska body art association. (not the specific title, but that is who they represent) They have asked if there would be an opportunity for them to

assist the cosmetology board in doing the weighting of the inspection form and provide comments on it. They would like to be a part of anything related to body art. They are asking to assist the board and they would like to be a part of the inspection form process. Discussion included the following:

- Work sessions can be attended by the public. The agendas are out on the internet if anyone is interested. Anyone can attend.
- If the board does this for one licensing group, it should be done for each area that the cosmetology board licenses. Inspection reports for nail technology and cosmetology have been developed without input from other groups. It will be a different process that we are using in the future.
- The board must be fair and consistent with everyone. It is the board's decision as to the weighting of the inspection forms. The public was involved with regulation hearings. It is up to the board to determine how these items are rated and weighted on the inspection forms.

Nail Technology: Ms. Chiles indicated the new nail technology inspection forms are being utilized. The rating scale of each item is being tested to see how it is working – if the highs and lows really make sense. The new format has been in use for about one month. Her expectation is to have an idea at the next meeting whether there are more or less failures. The same will be done with cosmetology and body art inspection revised formats.

b. Newsletter

Ms. Chiles indicated a few articles are still needed. Judy Roubal's article is complete and would have been turned in today, however, she is ill. Pam Rowland indicated her article is written and will be sent. Judy Wilson will be doing an article for electrology. Once these articles are all compiled, a draft will be developed.

In response to questions, Ms. Chiles indicated the following:

- The board will receive a rough draft to review.
- A newsletter will be done yearly.
- There will be a separate mailing of the newsletters. They will not be enclosed with the renewal notices because the various licenses renew at different times.
- Persons are more likely to read the newsletter if it is sent in a separate mailing. They would only be receiving the newsletter and not distracted by other forms.
- The newsletter will be out on the internet and may be printed off. There will be some extra copies in our office if you wish to have additional copies.
- The original intent was just to send one copy per licensee.

c. Use of same room for different scope of practice

Ms. Chiles indicated use of the same room for different scopes of practice was discussed during a previous work session, briefly during the February board meeting and again during the March 6 worksession. This is related to future regulatory changes regarding the separation of practices within the same facility. Currently, the law requires 6 foot partitions between the different practices. The cosmetology field is incorporating many levels of practice, plus massage is becoming more prevalent in establishments. The discussions regard entrances from the outside into the various practices and if it is acceptable to walk through one type of practice area to get to another type of practice area. The workgroup set out which professions they felt could share rooms and there would not have to be a divider. They also discussed which professions could not share a space.

Also discussed by the workgroup was manicuring/pedicuring. The Board does not regulate manicuring/pedicuring since it is an unlicensed practice. A suggested future change to the regulations would no longer require 6 foot high partitions between licensed and unlicensed persons, which would then allow inspection of the entire area.

Ms. Chiles indicated drafting of language for proposed changes to the regulations will occur at the next rewrite opportunity.

d. Board conviction guideline review – solo practice conditions

Ms. Chiles indicated the main focus of the board conviction guideline review was to address the issue of restricting practice. More specifically, solo practice. The group made a list of probationary standards whereby individuals could not practice by themselves but could practice with somebody else. One case was modified because of the solo practice issue. The people at the work session talked about this at great length. Instead of setting strict guidelines, the group would like to look at each individual on a case-by-case basis and review the conviction history. Every case is not identical. Issues to consider are:

- How long ago the conviction take place
- The situation leading up to the conviction
- The time frame involved and if additional convictions have occurred
- How the conviction relates to the scope of practice
- Each case needs to be reviewed individually. Guidelines are the board's starting point.

The workgroup indicated no changes in the guidelines.

e. Foot spa sanitation

Pam Rowland reported regarding website information relating to California and Arizona foot spa sanitation procedures. She had trouble trying to download the information. Online, under European Touch they actually have two separate procedures for cleaning the traditional pipe whirlpool spa and another procedure for the pipe-free spa. Ms Rowland indicated the manufacturers are all doing something different and there is no real consensus on how the procedure should be done. Ms. Rowland indicated she will bring copies of the various companies information sheets to the worksession. She will bring a copy of what the State of California is proposing for their regulations. They have already gone through the stages that we are going through now on what they think is the best and safest way to go for the public.

f. Future Worksession

Future worksessions were scheduled as follows:

May 15, 2006

July 10, 2006

August 7, 2006 is the regular Cosmetology Board Meeting.

Ms. Chiles reminded the board that the Board decisions (voting) cannot be made during the worksession. The following topics will be addressed during the worksessions:

- Regulation changes to address
- Sanitation: chamois buffers and files, client boxes. There are concerns regarding procedures currently in the regulations regarding reuse of items in the client boxes, disinfection process, number of times to use before discarding and inspection procedures.
- Use of cuticle nippers by unlicensed manicurists. Review of manicuring definition regarding practice on just the nail or does it include skin (cuticles), soaking and cleansing.

Members are to indicate areas that have been questionable for discussion during the worksession. Ms. Chiles clarified that scope of practice definitions are statutory issues and sanitation requirements are regulatory issues.

g. Legislative changes

Ms. Chiles reminded the board that during 2005 the worksessions involved going through the statutes and changes were recommended. Since those changes were not introduced during the 2006 session, if there other issues or changes to the rewrite they may be addressed during the work session.

In regard to requiring a license for manicuring and pedicuring that is a different process. Since this would create a new type of license, the department must receive a proposal by August to determine if they would be supportive of introduction of legislation during the 2007 session.

f. Examination Reporting

Discussion was held regarding the number of nail technology failures. Interest in receiving a report regarding the schools attended was expressed. Ms. Gray advised not all of the nail technology applicants are Nebraska graduates. She also explained that the number reported is the number of tests taken not the number of individuals taking the tests. Many take the test several times. In response to a question Ms. Gray advised the cost for taking the paper/pencil format is \$15.00 and the individual may take the test one time within one year at no additional fee. The computer-based format fee is \$70 and is paid every time they take the exam. There is no limit the number of times a person may take the test.

Does everybody know where the computer testing sites are in Nebraska? Currently they are: Omaha, Millard, Crete, Kearney, and Sidney. We wanted availability across the state. Lasergrade started out primarily testing pilots. Many of the lasergrade sites are located at airports. Lincoln is no longer a testing site. Crete is now the location that people near Lincoln are directed.

Tracking school performances may be something you want to use in the future for accreditation purposes. We could check with the testing company to set up codes for each of the particular schools. This code could then be entered on the test for tracking purposes. There may be an additional charge from the testing company for doing this or we may be able to do this internally. It would be interesting to check the volume of failures. We have talked about this in the past but have never finalized anything. It would be good to do this for all the cosmetology related professions. Could we include this on the next board meeting agenda?

Is there a way we could get away from having to submit a picture with the exam application? We really don't need them. At the pencil/paper examination we do need the photos because candidates forget to bring a photo id for admittance into the exam. We refer to their application and the photo that has been submitted to verify that this is indeed the applicant. If they are going to take the computer based exam, they really don't need the photo. The whole purpose for the picture is for identification at the written exam. We haven't singled them out that if they are taking the computer-based exam, we don't need a photo and if they are taking the pencil/paper exam, we do. We haven't done that. It is a statutory requirement to include the photo with the application. Didn't we have a time where nail technicians were taking the exam for somebody else? We don't monitor the computer test. What do they need as entrance into the computer-based exam? They would need to bring the authorization letter that the state issues. They have to take this letter with them to be admitted into the lasergrade exam. Do they check it? I'm sure they do. They would be looking at a photo identification. We have several applicants that take the exam by one format and choose to switch to retake the exam by the other format. One may start out by taking the pencil/paper exam and fail. Then they retake the computer-based exam and fail. Then they choose to retake the pencil/paper exam again. Or the other way around. Some of it is timing. They can take the computer test at their convenience vs. the pencil/paper exam which is given every other month in Lincoln on a designated date. It depends on when we get their application and when the testing will occur and where they are physically located. If they are located near Lincoln, they will rather take the pencil/paper exam.

NEW BUSINESS

1. Correspondence Issues/Other

Body Art - none

Cosmetology – Marie Nordboe reported there is a new cosmetology association in Nebraska. The National Cosmetology Association (NCA) is a national membership only and it no longer has state or local affiliates. The new state association is the Cosmetology Association of Nebraska (CAN). The chairperson is Deb Erickson from North Platte, Nebraska.

Ms. Gray indicated the office received inquiries for cosmetology insurance. Ms. Nordboe indicated the national association has some insurance available depending upon the current provider. The Cosmetology Association of Nebraska (CAN) currently has a \$2,000 accident policy for its members.

Continuing Education Application Revision - Pam Rowland asked for this to be put on the agenda. Concerns included the application fee, objectives and category. Discussion was held as follows:

a. Application Fee - Concern was expressed regarding the fees required for a program. If one person is submitting a class that will be applicable to several categories, is the fee just \$10.00 or is it \$10.00 per category. The current process is to assess \$10.00 per license category. Ms. Chiles indicated the board needs to decide how to charge because it is possible the fee may be assessed per category or per application. This issue will be discussed further during a worksession. The purpose of a fee is to recoup the cost of the review process

b. Objectives and Category – It was questioned if a nail technology instructor may attend a nail technology program to meet the instructor renewal requirement. Ms. Chiles indicated the content for an instructor continued education course is different than for the nail technologist. For an instructor, at least four of the eight hours must cover teaching methodology. There is no breakdown between the cosmetology instructor, nail technology instructor or esthetics instructor. Teaching methodology could include topics such as handling difficult students, curriculum or other topics that would be specific to the knowledge an instructor needs as a teacher, opposed to what is needed to practice a certain profession. This is also an issue to discuss during a worksession.

c. Renewal Forms - Ms. Rowland also expressed concern regarding completion of the renewal forms. She felt it was confusing regarding how to mark the mandatory and non-mandatory hours. Ms. Chiles indicated this will also be addressed during a worksession.

d. Guest Artist Registration - Concern regarding the length of time it takes to receive a certification of licensure from the other state was discussed. An applicant may apply based upon their experience in the field being taught or their experience in teaching the subject matter.

e. Review of Applications - Applicants need to plan ahead if they are going to advertise the program as approved. The review process may take up to 30 days. If an application is incomplete, time needs to be allowed for correspondence regarding any deficiencies. Ms. Chiles indicated sixty days in advance of the program advertising date is a reasonable time frame.

f. Sanitation – There is no longer a requirement for including sanitation in a program submitted for approval

g. On-line Renewal – On-line renewal for cosmetologists is not available for the upcoming renewal. Nebraska On-Line was the vendor for that project previously. The company that has our current licensing computer program has been awarded the bid because it is more compatible, however it is also more expensive. Only a certain number of professions were budgeted to cover the cost.

2. Licensee Assistance Program (LAP) Annual Workshop – The Alcohol and Drug Addiction and Health Professional Relapse Prevention is going to be in charge of the program. It will be held May 19, 2006 at the University of Nebraska Omaha (UNO) Campus. This is a free program put on by the Licensee Assistance Program. These are the folks that do the evaluations for many of our applicants. Ms. Chiles encouraged all board members to attend if they have time. They will be talking about relapse issues for people that have had alcohol and drug problems and have since had a number of years of sobriety and then relapse. Any licensed person may attend.

Electrology - none

Esthetics - none

Nail Technology - Reported earlier in the meeting.

Other – Ms. Gray indicated the information regarding the National-Interstate Council of State Boards of Cosmetology (NIC) meeting contains information about recommendations for proposed by-law amendments for the

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NIC. It also includes information about the meeting. The information will be mailed to those board members that were not present today. July 19, 2006 is the hotel reservation deadline. The reservation packet will be sent out on or about June 5, 2006. Advise Ms. Gray by June 15, 2006 if you wish to attend. Marie Nordboe and Mike Evert expressed an interest in attending.

ADJOURNMENT

MOTION: Jeff Pippitt moved, seconded by Mike Evert to adjourn the meeting. A voice vote was taken. Voting aye: all. Voting nay: none. Motion carried.

The meeting adjourned at 1:40 p.m.

Respectfully submitted,

Marlene Wagoner, Secretary
Board of Cosmetology Examiners

Recorded by Susan Chocholousek, Credentialing Specialist.

Summarized by Susan Chocholousek and Carol Ann Gray, Credentialing Coordinator.